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HOUSE BILL 300

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Al Park

AN ACT

RELATING TO LIENS; CLARIFYING THE CONTENTS OF A LIEN CLAIM;
REQUIRING A DETERMINATION BY THE COUNTY CLERK; ALLOWING
DAMAGES, COSTS AND FEES FOR THE OWNER OF PROPERTY IF A LIEN IS
INVALID, FRIVOLOUS OR CLEARLY EXCESSIVE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 48-2-6 NMSA 1978 (being Laws 1880,
Chapter 16, Section 6, as amended) is amended to read:

"48-2-6. TIME FOR FILING LIEN CLAIM--CONTENTS.--Every
original contractor, within one hundred [~~and~~] twenty days after
the completion of [~~his~~] a contract, and every person, except
the original contractor, desiring to claim a lien pursuant to
Sections 48-2-1 through [~~48-2-19~~] 48-2-17 NMSA 1978 [~~must~~]
shall, within ninety days after the completion of any building,
improvement or structure or after the completion of the

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1 alteration or repair [~~thereof~~] of the building, improvement or
2 structure or the performance of any labor in a mining claim,
3 file for record with the county clerk of the county in which
4 [~~such~~] the property or some part [~~thereof~~] of it is situated a
5 claim containing a statement of [~~his~~] demands, after deducting
6 all just credits and offsets. The claim shall state the name
7 of the owner or reputed owner, if known; [~~and also~~] the name of
8 the person by whom [~~he~~] the claimant was employed or to whom
9 [~~he~~] the claimant furnished the materials; [~~and shall include~~]
10 a statement of the terms, time given and the conditions of the
11 contract; [~~and also~~] a description of the property to be
12 charged with the lien, sufficient for identification; and a
13 statement of the circumstances of nonpayment by the owner or
14 original contractor and a statement that the claim is being
15 filed within the appropriate time frame prescribed in this
16 section. The claim [~~must~~] shall be verified by the oath of
17 [~~himself or of some other person~~] the claimant."

18 Section 2. Section 48-2-8 NMSA 1978 (being Laws 1880,
19 Chapter 16, Section 8, as amended) is amended to read:

20 "48-2-8. RECORDING OF LIENS--INDEXING--FEES.--[The
21 county] If the claim is a verified claim that meets the
22 requirements of Section 48-2-6 NMSA 1978, which the county
23 clerk shall determine, the clerk [~~must~~] shall record the claim
24 in a book kept [~~by him~~] for that purpose [~~which~~]. The record
25 [~~must~~] shall be indexed as deeds and other conveyances are

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1 required by law to be indexed, [~~and~~] for which [~~he~~] the county
2 clerk may receive the same fees as are allowed by law for
3 recording deeds and other instruments. [~~Any claim, the form of~~
4 ~~which complies with the requirements of this article, shall be~~
5 ~~entitled to be filed of record and~~] A claim pursuant to this
6 section need not comply with the requirements of Section 14-8-4
7 NMSA 1978."

8 Section 3. A new section of Chapter 48, Article 2 NMSA
9 1978 is enacted to read:

10 "[NEW MATERIAL] FRIVOLOUS CLAIM--PROCEDURE.--

11 A. An owner of real property subject to a recorded
12 claim of lien, or a contractor, subcontractor, lender or
13 another lien claimant, who believes the claim of lien to be
14 frivolous and made without reasonable cause, clearly excessive
15 or otherwise invalid may apply by motion to the district court
16 for the county where the property, or some part of it, is
17 located for relief from or cancellation of the lien; for actual
18 damages, costs and attorney fees; and for an order directing
19 the lien claimant to appear before the court, at a time no
20 earlier than six nor later than fifteen days following the date
21 of service of the application and order on the lien claimant,
22 and show cause, if the claimant has any, why the relief
23 requested should not be granted. The motion shall state the
24 grounds upon which relief is asked and shall be supported by
25 the affidavit of the applicant or applicant's attorney setting

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1 forth a concise statement of the facts upon which the motion is
2 based.

3 B. If no action to foreclose the lien claim has been
4 filed, and the application is otherwise proper in the court's
5 determination, the court shall issue an order to show cause
6 that clearly states that if the lien claimant fails to appear
7 at the time and place noted, the lien shall be cancelled or
8 released, with prejudice, and that the lien claimant shall be
9 ordered to pay the reasonable actual damages, costs and
10 attorney fees requested by the applicant. If an action has
11 been filed to foreclose the lien claim, the application shall
12 be made a part of that action.

13 C. If, following a hearing on the matter, the court
14 determines that the lien is frivolous and made without
15 reasonable cause, clearly excessive or otherwise invalid, the
16 court shall issue an order releasing or cancelling the lien if
17 frivolous and made without reasonable cause or invalid, or
18 reducing the lien if clearly excessive, and awarding actual
19 damages, costs and reasonable attorney fees to the applicant to
20 be paid by the lien claimant. If the court determines that the
21 lien is not frivolous and was made with reasonable cause, is
22 not clearly excessive or otherwise invalid, the court shall
23 issue an order so stating and awarding costs and reasonable
24 attorney fees to the lien claimant to be paid by the applicant.

25 D. Proceedings under this section shall not affect

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other rights and remedies available to the parties."